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Attorneys for Plaintiff Gabrielle Gangitano

**THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

GABRIELLE GANGITANO, an individual.

Case No. 5:17-cv-02870-LHK

2

JOINT CASE MANAGEMENT

STATEMENT

1

Initial Case Management Conference

Date: August 23, 2017

) Date. August 2.

) Dept : Courtroom 8 - 4th Floor

) Dept.. Courtroom 8 1st Flr

Assigned to the Hon. Lucy H. Koh

) Assigned to the Hon. Lucy H. Ken

Complaint filed on May 18, 2017

} Complaint filed on May 18, 2017.

1 **TO THE COURT, ALL PARTIES AND TO THEIR RESPECTIVE**
 2 **COUNSEL OF RECORD:**

3 Pursuant to Fed.R.Civ.Proc.26(f), Civil L.R. 16-9 and 16-10, and the
 4 Court's Order of May 22, 2017, the parties, Plaintiff GABRIELLE
 5 GANGITANO ("Plaintiff") and Defendants CABRILLO COMMUNITY
 6 COLLEGE DISTRICT ("Cabrillo College") and ALEX B. TAURKE
 7 ("Taurke"), through their counsel of record, met and conferred and prepared
 8 the following Joint Case Management Statement.

9 **1. JURISDICTION AND SERVICE**

10 This action is brought under Title IX of the Education Act Amendments
 11 of 1972 (20 U.S.C. § 1681) and 42 U.S.C. § 1983 against Defendant Cabrillo
 12 College. Plaintiff also presents state law claims for sexual assault and battery
 13 against Defendant Taurke. Subject matter jurisdiction over this action is
 14 conferred by 28 U.S.C. § 1331 (federal question) and § 1343(3) (civil rights).
 15 Plaintiff's state law claims for relief are within the supplemental jurisdiction of
 16 the Court pursuant to 28 U.S.C. § 1367(a).

17 Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because
 18 the wrongful conduct giving rise to this case occurred in the County of Santa
 19 Cruz, California, which is located in the Northern District of California.
 20 Plaintiff is also, and at all relevant times was, a citizen and resident of Santa
 21 Cruz County, located in the Northern District of California. Since the acts or
 22 omissions which give rise to Plaintiff's claims occurred in the County of Santa
 23 Cruz, pursuant to Civil L.R. 3.2(c), this action is appropriately assigned to the
 24 San Jose division of the Northern District Court.

25 No issues exist among the parties regarding personal jurisdiction or
 26 venue. Defendants Cabrillo College and Taurke have been served. At this
 27 time, there are no parties that remain to be served.

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1 **2. FACTS**

2 Plaintiff alleges in her complaint that she was sexually harassed and
 3 assaulted by defendant Taurke who was her professor at Cabrillo College. In
 4 May 2016, Plaintiff sought an avenue to make her complaint to Cabrillo
 5 College. Plaintiff's initial attempts to notify Cabrillo College were stymied by
 6 Defendant's inept bureaucratic labyrinth that ended with the male athletic
 7 director. Frustrated, in May 2016 Plaintiff contacted the U.S. Department of
 8 Education's Office of Civil Rights (hereinafter "OCR"), which proceeded to
 9 notify Cabrillo College of Plaintiff's serious allegations against her professor.

10 Plaintiff further alleges that for seven months, until December 21, 2016,
 11 Cabrillo College did nothing until it reached a resolution agreement with OCR,
 12 and still has not done anything about Plaintiff's specific complaints about
 13 Taurke. Cabrillo College's resolution agreement only promised to improve its
 14 Title IX compliance going forward. Plaintiff alleges that Cabrillo College was
 15 deliberately indifferent towards Plaintiff during this entire period. Plaintiff
 16 alleges that Defendant never conducted an investigation itself into Plaintiff's
 17 specific allegations concerning Taurke after being notified of her claims.

18 Defendants Taurke and Cabrillo College dispute all claims alleged
 19 against them..

20 **3. LEGAL ISSUES**

21 In Plaintiff's Opposition to Cabrillo College's Motion to Dismiss filed
 22 on July 27, 2017, Plaintiff recently agreed to dismiss her second cause of
 23 action 42 U.S.C. § 1983. (See Dkt. 21.)

24 Thus, as to the remaining causes of action in Plaintiff's complaint, the
 25 legal issues involve whether Taurke sexually harassed and assaulted Plaintiff.
 26 In addition, under Plaintiff's Title IX cause of action, the legal issues involve
 27 whether: (1) the institution (Cabrillo College) had "substantial control" over
 28 both the harasser and the context in which the harassment occurred; (2)



1 plaintiff suffered harassment “that is so severe, pervasive, and objectively
 2 offensive that it can be said to deprive the victim of access to the education
 3 opportunity or benefits provided by the school;” (3) the institution had “actual
 4 knowledge of the harassment;” and (4) the institution acted with “deliberate
 5 indifference” to the known harassment”; and (5) this deliberate indifference
 6 “cause[d] students to undergo harassment or ma[d]e them liable or vulnerable
 7 to it.” *Takla v. Regents of the University of California*, 2015 WL 6755190
 8 (C.D. Cal. Nov. 2, 2015) (“Takla”) (citing *Gebster v. Lago Vista Indep. Sch.*
 9 *Dist.*, 524 U.S. 274, 290-93 (1998).

10 The legal issues also involve whether Plaintiff was damaged, the nature
 11 and extent of those damages, and Plaintiff’s recovery for those damages if she
 12 is entitled to them.

13 **4. MOTIONS**

14 On June 29, 2017, Cabrillo College filed its Motion to Dismiss
 15 Plaintiff’s causes of action under Title IX and 42 U.S.C. § 1983, which is set
 16 to be heard on September 12, 2017. (See Dkt. 16.) Plaintiff has filed an
 17 Opposition (see Dkt. 21) and Cabrillo College will have filed a Reply by the
 18 time this Statement is filed.

19 Cabrillo College anticipates that it will file a Motion for Summary
 20 Judgment as well in the future, if it is not successful on its current or any
 21 subsequent Motions to Dismiss.

22 **5. AMENDMENT OF PLEADINGS**

23 As indicated earlier, Plaintiff recently agreed to dismiss her second
 24 cause of action under 42 U.S.C. § 1983 in Plaintiff’s Opposition to Cabrillo
 25 College’s Motion to Dismiss. (See Dkt. 21.) The parties do not anticipate at
 26 this time that any other parties, claims or defenses will be added or dismissed.

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1 **6. EVIDENCE PRESERVATION**

2 All of the parties certify that they have reviewed the Guidelines Relating
3 to the Discovery of Electronically Stored Information (“ESI Guidelines”) and
4 confirm that they have met and conferred pursuant to Fed.R.Civ.Proc.26(f)
5 regarding reasonable and proportionate steps taken to preserve evidence
6 relevant to the issues reasonably evident in this action.

7 **7. DISCLOSURES**

8 All of the parties confirm that they have complied with the exchange of
9 initial disclosures pursuant to Fed.R.Civ.Proc.26, by exchanging their
10 disclosures on or before Wednesday, August 16, 2017 with all parties (7 days
11 prior to the Case Management Conference scheduled on August 23, 2017).

12 **8. DISCOVERY**

13 **a. Discovery Conducted to Date**

14 Other than the initial disclosures recently exchanged, no other discovery
15 has been conducted to date.

16 **b. Scope of Anticipated Discovery**

17 Discovery will be conducted into the liability and damage issues through
18 written discovery (interrogatories, request for admissions, demand for
19 productions, and inspection demands), depositions, subpoenas for records, and
20 any other relevant discovery provided in the Fed.R.Civ.Proc. and Civil L.R.

21 **c. Proposed Limitations or Modifications to the Discovery Rules**

22 None proposed at this time. The parties agree that discovery will be
23 conducted pursuant to the guidelines provided by the Fed.R.Civ.Proc. and
24 Civil L.R.

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1 **d. Stipulated E-Discovery Order**

2 The parties anticipate that that a stipulated protective order will be
3 implemented in this case before the production of any sensitive/confidential
4 and or privileged documents are produced in this case. The parties will meet
5 and confer regarding the terms of the stipulated protective order, which the
6 parties hope to submit to the Court for approval prior the Case Management
7 Conference scheduled on August 23, 2017. If the parties are unable to come to
8 a complete agreement on the terms of the stipulated protective order by the
9 Case Management Conference, the parties request the Court's assistance with
10 addressing the disputed terms at the Conference.

11 **e. Proposed Discovery Plan**

12 The parties have met and conferred and have prepared the following
13 proposed discovery plan, in the anticipating of conducting an early mediation
14 with a mutually agreed upon private mediator, to be completed by the end of
15 November 2017.

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Event	Proposed Deadline
Initial Disclosures	Monday, August 21, 2017
Initial Written Discovery	Thursday, October 31, 2017
Depositions of Plaintiff, Taurke and Fed.R.Civ.Proc.30(b)6 witnesses from Cabrillo College	Thursday, October 31, 2017
Mediation Completion Date	Thursday, November 31, 2017
Supplemental Written Discovery	Ongoing up to Trial
Any Additional Depositions	Ongoing up to Trial
Other Relevant Discovery	Ongoing up to Trial
<i>Please see Section 17, SCHEDULING, for additional dates.</i>	

9. **CLASS ACTIONS**

10. Not applicable. This matter is not a class action.

11. **RELATED CASES**

12. There are no related cases or proceedings pending before another judge
of this court, or before another court or administrative body.

13. **RELIEF**

14. Under Plaintiff's Title IX cause of action against Defendant Cabrillo
College, Plaintiff alleges she has suffered damages for which she is entitled to
compensatory damages and injunctive relief, and because she has been
compelled to employ attorneys, is entitled to attorneys' fees pursuant to 42
U.S.C. §1988(b), according to proof.

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1 Under Plaintiff's sexual assault and sexual battery claim against
2 Defendant Taurke, Plaintiff alleges that she has suffered damages for which
3 she is entitled to compensatory and punitive and exemplary damages according
4 to proof, as Plaintiff alleges that Professor Taurke carried out the
5 aforementioned acts knowing that great bodily injury and emotional distress
6 were substantially certain to be caused to Plaintiff; yet he continued to engage
7 in said despicable acts maliciously and with a conscious disregard of the rights
8 and safety of Plaintiff.

9 **12. SETTLEMENT AND ADR**

10 No ADR has taken place to date. The parties are all amenable to private
11 mediation, and anticipate completing such a mediation by November 31, 2017
12 with a mutually agreed upon private mediator, after initial written discovery
13 and the depositions of Plaintiff, Taurke, and a Fed.R.Civ.Proc.30(b)6 witness
14 on certain issues from Cabrillo College are taken. The parties indicate that they
15 have all complied with the requirements of ADR L.R. 3-5.

16 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

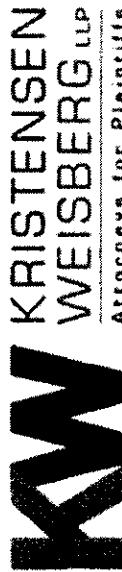
17 The parties do not consent to have a magistrate judge conduct all further
18 proceedings including trial and entry of judge.

19 **14. OTHER REFERENCES**

20 The parties do not believe this case is not suitable for reference to
21 binding arbitration, a special master, or the Judicial Panel on Multidistrict
22 Litigation.

23 **15. NARROWING OF ISSUES**

24 Plaintiff's claims against Cabrillo College may be narrowed through its
25 current Motion to Dismiss on calendar, or a Motion for Summary Judgment
26 filed in the future on the main issue of whether Cabrillo College was
27 deliberately indifferent to Plaintiff once it received notice of the sexual assault
28 and battery claims against Taurke.



1 **16. EXPEDITED TRIAL PROCEDURE**

2 The parties confirm that this is not the type of case that should be
 3 handled under the Expedited Trial Procedure of General Order No. 64
 4 Attachment A.

5 **17. SCHEDULING**

6 The parties have met and conferred and provide the following proposed
 7 Dates to the Court for the following events:

<u>Event</u>	<u>Proposed Deadline</u>
Mediation Completion	Thursday, November 30, 2017
Hearing of Dispositive Motions	Friday, March 30, 2017
Designation of Experts	Friday, June 8, 2018
Discovery Cut-Off	Friday, June 8, 2018
Expert Discovery Cut-Off	Friday, July 20, 2017
Pre-Trial Conference	Monday, July 30, 2018
Trial	Monday, August 13, 2018

17 **18. TRIAL**

18 The parties preliminarily estimate a 4-6 day jury trial in this case.

19 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR
20 PERSONS**

21 All of the parties who are required to file a "Certification of Interested
 22 Entities or Persons" pursuant to Civil L.R. 3-15 have filed the certification,
 23 with a restatement of the contents of the certification provided below:

24 **a. Plaintiff**

25 Pursuant to Civil L.R. 3-15, Plaintiff certified that other than the named
 26 parties, there is no such interest to report.

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1 **b. Cabrillo College**

2 Pursuant to Civil L.R. 3-15, Cabrillo College is a governmental entity
3 and therefore, exempt from this certification requirement.

4 **c. Taurke**

5 Pursuant to Civil L.R. 3-15, Taurke certified that other than the named
6 parties, there is no such interest to report.

7 **20. PROFESSIONAL CONDUCT**

8 All of the attorneys of record for the parties have reviewed the
9 Guidelines for Professional Conduct for the Northern District of California,
10 and agree to abide by its guidelines.

KRISTENSEN
WEISBERG LLP
Attorneys for Plaintiffs

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1 **OTHER ISSUES**

2 The parties do not anticipate any other issues at this time.

3 Dated: August 16, 2017

4 **KRISTENSEN WEISBERG, LLP**

5 _____
6 */s/ John P. Kristensen*

7 John P. Kristensen
8 David L. Weisberg
9 Christina M. Le
10 Attorneys for Plaintiff

11 Dated: August 16, 2017

12 **BERTRAND, FOX, ELLIOT,
13 OSMAN & WENZEL**

14 By: /S/ Nicole L. Phillips

15 Eugene B. Elliot
16 Ethan M. Lowry
17 Nicole L. Phillips
18 Attorneys for Defendant
19 CABRILLO COMMUNITY
20 COLLEGE
21 DISTRICT

22 Dated: August 16, 2017

23 **DAVIS & YOUNG, LLP**

24 By: /S/ Adam J. Davis

25 Adam J. Davis
26 Mark E. Davis
27 Attorneys for Defendant
28 ALEX B. TAURKE

ATTORNEY ATTESTATION

I hereby attest that I have on file all holograph signatures for any signatures indicated by a conformed signature ("/*s*/") within this E-filed document or have been authorized by counsel for Defendants Cabrillo Community College District and Alex Taurke to show their signature on this document as /*s*/.

Dated: August 16, 2017

KRISTENSEN WEISBERG, LLP

/s/ John P. Kristensen

**John P. Kristensen
David L. Weisberg
Christina M. Le
Attorneys for Plaintiff**



PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is:

12540 Beatrice Street, Suite 200, Los Angeles, California 90066

On Wednesday, August 16, 2017, I served the foregoing document described as:

JOINT CASE MANAGEMENT STATEMENT

[X] by placing [] the original [X] copies addressed as follows:

Nicole Phillips, Esq.
Bertrand, Fox, Elliot, Osman & Wenzel
2749 Hyde Street, San Francisco, CA
94109
Counsel for Defendant Cabrillo College

**Davis & Young
1960 The Alameda
Suite 210
San Jose CA 95126
Counsel for Defendant Alex
Taurke**

[] VIA ELECTRONIC TRANSMISSION

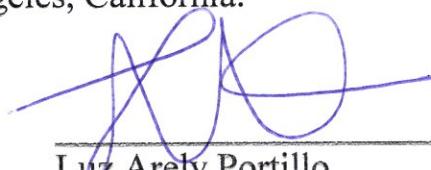
[X] (BY MAIL) I am familiar with the practice of Kristensen Weisberg, LLP for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Kristensen Weisberg, LLP, Los Angeles, California, following ordinary business practices.

[] (BY FEDEX) I am familiar with the practice of Kristensen Weisberg, LLP for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by FedEx that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by FedEx with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by FedEx at Kristensen Weisberg, LLP, Los Angeles, California, following ordinary business practices.

[] (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the offices of the addressee.

1 [] (BY FACSIMILE TRANSMISSION) On this date, indicated on the
2 transmittal sheet I transmitted from a facsimile transmission machine, which
3 telephone number is (310) 507-7906, the document described above and an
4 unsigned copy of this declaration to the person, and at the facsimile transmission
5 telephone numbers, set forth herein. The above-described transmission was
6 reported as complete and without error by a properly issued transmission report
7 issued by the facsimile transmission machine upon which the said transmission
8 was made immediately following the transmission.

9
10 I declare under penalty of perjury under the laws of the State of California
11 that the foregoing is true and correct, and that this declaration was executed on
12 Wednesday, August 16, 2017, at Los Angeles, California.
13
14



15 Luz Arely Portillo
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KRISTENSEN
WEISBERG LLP
Attorneys for Plaintiffs